

REMARKS

The Examiner is thanked for the review of the application. Claims 1-24 are pending.

Claims 6 and 18

Claims 6 and 18 have been amended to correct grammatical errors unrelated to their claim scope.

Claim 15

Claim 15 has been amended to correct an informality unrelated to its claim scope.

Claims Distinguished

Claims 1-24

Claims 1-24 were rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,742,829 to Davis et al. ("*Davis*").

35 U.S.C § 102(b) provides:

A person shall be entitled to a patent unless -

...

(b) the invention was patented ... in this ... country ... more than one year prior to the date of the application for patent in the United States

To establish a *prima facie* case of anticipation under 35 U.S.C § 102, the Examiner must identify where "**each and every facet of the claimed invention is disclosed in the applied reference**" *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1462 (Bd. Pat. App. & Interf. 1990), see also *Electro Med. Sys. S.A. v. Cooper Life Sciences*, 34 F.3d 1048, 1052, 32 U.S.P.Q.2d 1017, 1019 (Fed. Cir. 1994).

Furthermore, anticipation requires that each claim element must be identical to a corresponding element in the applied reference. *Glaverbel Société Anonyme v. Northlake Mktg & Supply, Inc.*, 45 F.3d 1550, 1554 (Fed. Cir. 1995). Indeed, the failure to mention "a claimed element (in) a prior art reference is enough to negate anticipation by that reference" *Atlas Powder Co. v. E.I. duPont De Nemours*, 750 F.2d 1569, 1574 (1984).

Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of anticipation and that Claims 1-24 are patentable over *Davis*. The Office Action fails to show, and the Applicants are unable to find, where *Davis* discloses, teaches or even suggests the subject

matter of the claimed invention. Among other differences, *Davis* fails to teach, disclose or suggest the element of providing a client computer with a task list. In particular, the cited and applied reference fails to teach, disclose or suggest "providing a client computer with an update task list listing one or more tasks to be performed by the client computer asynchronously." It is incorrect that *Davis* specifies providing a task list, and further incorrect to allege that such a task list of a client computer lists one or more tasks to be completed asynchronously by *Davis*. Those of ordinary skill in the art will appreciate that *Davis* merely schedules, at a server computer, downloads of updates to a client computer. Accordingly, as will be further discussed below, Claims 1-24 clearly recite one or more of these elements not taught or suggested by *Davis*.

Davis teaches a software updating system. *Davis* accomplishes the software updates on a server-side system that has servers determining the update requirements and schedules of client computers. In contrast, Claim 1 reads as follows:

1. In a server, a method of operation comprising:
accepting check in **by a client computer** at a first point in time to **determine if the client computer's software needs to be updated**; and
providing the client computer with an **update task list** listing one or more **tasks to be performed by the client computer asynchronously** at a later point or later points in time to update the client computer's software, if it is determined that the client computer's software is to be updated.

(emphasis added)

The software updating of the method recited in Claim 1 provides a type of software updates not taught or disclosed by *Davis*. In fact, the Applicants have been unable to identify anywhere within *Davis*, let alone the cited portions of *Davis*, where a task list is mentioned. In particular, *Davis* fails to teach "providing the client computer with an **update task list** listing one or more **tasks to be performed by the client computer asynchronously** at a later point or later points in time to update the client computer's software" (see also page 9, lines 13-20 for further examples). From this distinction alone, it is clear that the present invention, as recited in Claim 1, is distinct from the teachings of *Davis*. *Davis* uses a server to schedule and push down updates. *Davis* is not a system for a client computer asynchronous updating software of a client computer as in the invention of Claim 1. The present invention, as recited in Claim 1, is directed to providing such a method of computing with updates performed at the client computer.

Thus, it is clear that *Davis* fails to teach the method of updating of the present invention. *Davis* merely teaches a method of scheduling at a server, that is distinct from the present invention as claimed in Claim 1. Likewise, independent claims 8, 13 and 20 contain similar elements not taught by *Davis*. Therefore, Applicants submit that Claims 1, 8, 13 and 20, as and all the claims dependent therefrom (Claims 2-7, 9-12, 14-19 and 21-24) are clearly allowable.

Claims 2-7, 9-12, 14-19 and 21-24 depend from allowable independent claims and are therefore allowable for the reasons already noted above. Claims 2-7, 9-12, 14-19 and 21-24 are allowable for additional reasons. These claims include further recitations not taught, disclosed, or even suggested by *Davis*. For example, Claim 7 recites that the client computer will "retry one or more of the subsequent asynchronous requests for software parts". Applicants have been unable to identify anywhere in *Davis* where *Davis* teaches specifying retrying asynchronous requests. The cited portion of *Davis* (Figure 3A and related text) has no teaching of retrying any requests, let alone retrying asynchronous requests. Accordingly, as *Davis* fails to teach retrying asynchronous requests, as in the present invention, it is clear that *Davis* does not anticipate Claim 7. For these reasons, in addition to those already noted above, Claim 7 is in condition for allowance. The remaining dependent claims also recite limitations not taught by *Davis*.

CONCLUSION

As a result, Applicants submit that all of the pending claims are in condition for allowance. Accordingly, a Notice of Allowance is respectfully requested. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 689-1216. If any fees are due in connection with filing this paper, the Commissioner is authorized to charge Deposit Account No. 500393.

Date: _____

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Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT, PC



Adam L.K. Philipp
Reg. No. 42,071

Customer No. 25943
1211 SW Fifth Ave., Ste. 1600-1900
Portland, Oregon 97204
Phone: (206) 622-1711
FAX: (206) 292-0460

E-Mail: aphilipp@schwabe.com